

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DIAMOND DURRELL WILLIAMS,

Defendant-Appellant.

UNPUBLISHED

February 23, 1999

No. 203588

Genesee Circuit Court

LC No. 91-045098 FC

Before: Murphy, P.J., and MacKenzie and Talbot, JJ.

MEMORANDUM.

Defendant appeals by right his sentence for voluntary manslaughter, MCL 750.321; MSA 28.553. We affirm.

Defendant was convicted by a jury of second-degree murder, MCL 750.317; MSA 28.549, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2) (later dismissed by the court). The court sentenced him to twenty-five to forty years in prison for second-degree murder. Defendant appealed, and in *People v Williams*, unpublished opinion per curiam of the Court of Appeals, issued January 16, 1996, (Docket No. 160623), we reversed and remanded for a new trial.

Defendant pleaded guilty to voluntary manslaughter in return for dismissal of the charge of second-degree murder. The court sentenced defendant to ten to fifteen years in prison, with credit for 2,148 days. The court exceeded the guidelines, which recommended a minimum term range of three to eight years, for the stated reason that defendant could have avoided shooting the victim in the back and causing his death.

We affirm. Defendant's assertion that the guidelines were improperly scored does not present a basis for appellate relief. *People v Mitchell*, 454 Mich 145, 177-178; 560 NW2d 600 (1997). Defendant's argument that his sentence is disproportionate is without merit. Sentence length is reviewed pursuant to the principle of proportionality. A sentence must be "proportionate to the seriousness of the circumstances surrounding the offense and the offender." *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990). The key test of the proportionality of a sentence is whether it reflects the

seriousness of the matter. *People v Houston*, 448 Mich 312, 320; 532 NW2d 508 (1995). A court may depart from the guidelines if the recommended range inadequately reflects the seriousness of the offense. *People v Witcher*, 192 Mich App 307, 309; 480 NW2d 636 (1991). Here, the departure was justified by the circumstances of the offense. Defendant admitted that after he shot decedent the first time, he fired a second shot into decedent's back. Such an action was inconsistent with defendant's position that he was threatened by decedent. The court adequately explained its reasons for departing from the guidelines. *People v Fleming*, 428 Mich 408, 428; 410 NW2d 266 (1987); MCR 6.425(D)(1).

Affirmed.

/s/ William B. Murphy
/s/ Barbara B. MacKenzie
/s/ Michael J. Talbot